

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

LAUREN HOWIE LAUR,

Case No: 14 CV 27

Plaintiff,

v.

CITY OF MEQUON, CITY OF MEQUON
POLICE DEPARTMENT (*sic*), THE ESTATE
OF TYLER GAIDISH (*sic*) and MICHAEL
KRANZ,

Defendants.

**MOTION TO DISMISS ESTATE OF TYLER GAIDISH
AND MOTION IN LIMINE ON GAIDISH' ACTIVITES
AND FOR SANCTIONS**

COME NOW the defendants herein and move to dismiss “The Estate of Tyler Gaidish” as a defendant in this case. Defendants also move the court in limine prohibiting any mention of any allegedly improper activities on the part of Officer Gaidish. Finally, defendants move for sanctions against the plaintiff for misleading the court and counsel as to the existence of an Estate of Tyler Gaidish as a defendant in this case;

AS GROUNDS for these motions, defendants refer to the annexed Exhibit 1, Docket for Washington County Case No. 2012 PR 143 (taken from CCAP), the annexed Exhibit 2, a certified copy of the Washington County Probate Court Docket for Case No. 2014 PR 48, defense counsel’s expenditure of approximately seven hours on the defense of a non-existent entity, and the following memorandum.

FACTUAL BACKGROUND

Plaintiff has filed two complaints in this action. The first complaint was filed on January 10, 2014. An amended complaint was filed on January 29, 2014. The primary difference between the two documents is that the amended complaint added claims against the City of Mequon as a defendant.

Both the original and the amended complaint contain the same allegations concerning “The Estate of Tyler Gaidish.” In paragraph seven of the original complaint, plaintiff alleges “Defendant, the Estate of Tyler Gaidish, is named on behalf of Officer Tyler Gaidish, deceased....” The exact same language appears in the amended complaint at paragraph eight. Both complaints go on to describe various activities of Officer Gaidish during his arrest of the plaintiff.

“The Estate of Tyler Gaidish” was supposedly served with this lawsuit by plaintiff’s serving the City of Mequon. (Docket item # 10).

Tyler Gaidish lost his life under tragic circumstances on Easter Sunday, April 8, 2012.

Defendant believes that the court is familiar with CCAP, which is a data base of Wisconsin state court cases. Exhibit 1 attached hereto is the Court Record Events, *i.e.* the docket sheet, for Washington County Case No. 2012 PR 143. The court will observe that a personal representative was appointed for the purposes of foreclosing a mortgage on Tyler Gaidish’s home.

In 2012 PR 143 the petition for appointment of special administrator was filed on November 9, 2012. The foreclosure went ahead, the administrator was discharged, and the case closed on April 8, 2013.

As noted, this lawsuit was filed on January 10, 2014, some nine months *after* the special administration has been closed.

That is, at the time this lawsuit was filed in federal court, there was no pending estate.

As shown on Exhibit 2 attached hereto, on April 1, 2014, plaintiff's counsel in this case, Kimberly Powers, filed a petition for special administration, identified as 2014 PR 48. This petition was filed almost 3 months *after* the complaint was filed in this court, naming "The Estate of Tyler Gaidish" as a defendant. Ms. Power's express purpose for opening an estate for Tyler Gaidish was so that she would have an entity to sue in this pending federal case.

A hearing on the petition in 2014 PR 48 was conducted on May 20, 2014. The court questioned Ms. Powers as to whether her appointment would be a conflict of interest under Supreme Court rules. The court also noted that Tyler Gaidish's parents had not been given notice of the estate hearing.

The probate court denied Ms. Powers' petition and closed 2014 PR 48 on May 29, 2014. No further proceedings concerning "The Estate of Tyler Gaidish" appear in any Wisconsin Court.

ARGUMENT

Hornbook law holds that an "estate" is not a person, either natural or artificial. For example, 31 Am. Jur. 2d Executors and Administrators § 1085, says

"Estates" are not natural or artificial persons, and they lack legal capacity to sue or be sued, and it is well settled that all actions that survive a decedent must be brought by or against the personal representative.

Neither the estate nor a beneficiary thereof is a proper party to a lawsuit; rather, the administrator or executor is the proper party plaintiff or defendant. However, a personal representative may not sue or be sued until such time as he or she has received letters of administration.

Thus it is not possible to sue an “estate” because it is not a person. In order to make a valid claim, it is necessary to sue the personal representative of the estate. If there is no personal representative, there is no one to sue.

Wisconsin follows this rule. In In re Peterson's Estate, 66 Wis. 2d 535 (1975) the court said: “The personal representative is vested with the title to all property of the decedent. Sec. 857.01, Stats. The powers and duties of the personal representative are expressly provided by statute to include the duty to ‘contest all claims except claims which he believes are valid.’ Sec. 857.03.” (66 Wis. 2d at 539).

Further, “ Title to personal property does not pass from a deceased person to his or her next of kin, or legatees, without administration of the estate but vests in the personal representative.” Peters v. Kell, 12 Wis. 2d 32, 41 (1960).

Ms. Powers was obviously aware of these provisions of probate law. That is why she attempted to have herself appointed personal representative. The state court properly refused her request because it would have created an ethical violation.

At the time this suit was filed there was no entity in existence which could be sued for whatever liability Officer Gaidish might have had. Despite that fact, plaintiff named a fictional estate and attempted to serve process by serving Gaidish’s former employer. Surprisingly, neither the original complaint nor the amended complaint informed the court or counsel that a fictitious entity had been named.

Moreover, in the time which has passed since the Washington County probate court dismissed Ms. Powers’ petition, there has been no communication to the court or counsel that the probate court rejected her petition.

Defendants raised this issue in their answer. Plaintiff has never clarified why she is authorized to sue a non-existent entity for violations of her civil rights. It is clear that the fictitious defendant denominated as “The Estate of Tyler Gaidish” must be dismissed from this action.

Upon dismissal of the fictitious estate, Officer Gaidish is not a party; his personal representative is not a party; and his employer cannot be held responsible under a *respondeat superior* theory. See Monell v. Dep’t of Social Services 436 U.S. 658 at 694 (1978).

In short, there is no one who can be held responsible for any alleged violations of plaintiff’s civil rights by Officer Gaidish. Without a defendant in the case who is responsible for Officer Gaidish’s actions, there is no claim to be made. Without a claim there is no relevance to any actions by Officer Gaidish.

As a result the court should issue an order in limine barring any testimony about any purported civil rights violations on the part of Officer Gaidish. Among other things, plaintiff alleged that Gaidish violated her rights when he searched her, both at the scene of the arrest and at the Mequon Police Station. Plaintiff contends that Gaidish’s search at the police station violated Mequon policy because there may have been a female police employee available to do the search. Again, in Gaidish’s absence there is no claim and none of this testimony is relevant.

As to sanctions, defense counsel has spent about 7 hours in defense of “The Estate of Tyler Gaidish.” Primarily, this time has been spent: 1). reviewing the federal and state court documents; 2). reviewing the police reports concerning Officer Gaidish’s actions in this case; 3). watching video of the plaintiff’s interaction with Officer Gaidish; 4). questioning plaintiff about her interaction with Officer Gaidish, and; 5). preparing this motion. Defendants ask that appropriate sanctions be ordered.

Dated: June 18, 2015

By: _____/S/
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Wisconsin Circuit Court Access (WCCA)

In the Estate of Tyler E Gaidish

Washington County Case Number 2012PR000143

Court Record Events

	Date	Event	Court Official	Court Reporter
1	04-08-2012	Date of death		
2	11-09-2012	Petition for special administration Additional Text: to accept services of process in a foreclosure action		
3	11-09-2012	Letters/correspondence Additional Text: Letter received from Atty Steven Zablocki re: Petition for Special Administration		
4	11-09-2012	Consent to serve Additional Text: as special administrator from Christopher Hueneke		
5	11-09-2012	Filing fee paid Amount \$ 20.00 Additional Text: 12R 001013P		
6	11-13-2012	Order appointing special administrator Additional Text: with specific powers re foreclosure	Martens, Todd K.	
7	11-13-2012	Special administration letters issued Additional Text: to Atty Christopher Hueneke	Martens, Todd K.	
8	11-14-2012	Notice of summary procedures deadline	Kist, Denise M	
9	11-26-2012	Letters/correspondence Additional Text: copies from Atty Hueneke to inter persons		
10	04-04-2013	Letters/correspondence		

Additional Text:

from Atty Hueneke

11 04-04-2013 Special administration - petition for discharge

12 04-04-2013 Affidavit

Additional Text:

of Attorney Chris Hueneke Supporting Petition for Discharge of Special Administrator

13 04-08-2013 Order discharging special administrator Gonring, Andrew

14 04-08-2013 Case disposed Gonring, Andrew

Name	Date Of Death	Responsible C.O.	Case Number
Tyler E Gaidish	04-08-2012	Andrew T Gonring	2014PR000048
Case Class 50104 - Special Administration		Estate Value: \$	

Filing Date/C.O.		Disposition Date/C.O.		Disposition		Next Action
04-01-2014		05-20-2014		Case disposed		
Andrew T Gonring		James G. Poulos				
Party Type	Name	Address	City	St	Zip	Attorney/GAL
Decedent	Tyler E Gaidish	5615 Peters Dr	West Bend	WI	53095	
Petitioner	Kimberly A Powers	PO Box 447	Brookfield	WI	53008	
Creditor	Lauren Howie Laur	12501 N Circle Dr	Mequon	WI	53092	

Date	Court Record Entries	Amount	C.O. Court Reporter Tape/Counter Location
04-08-2012	Date of death		
04-01-2014	Petition for special administration request powers for tort litigation and re-open 12PR143		
04-01-2014	Consent to serve as Spec Admin and Resident Agency from Kimberly Powers		
04-08-2014	Letters/correspondence from Atty Powers with addtl info		
04-17-2014	Order setting time to hear petition for Special Administration - hgr May 16, 2014 at 9:00 am in BR 1		Andrew T Gonring
04-25-2014	Notice of hearing Hearing moved from May 16 to May 20, 2014 at 10:30 am in BR 1		
05-19-2014	Other papers Obituary for Tyler Gaidish		
05-20-2014	Hearing Apprs: Atty Kimberly Powers for petitioner; CT: reviewed Federal case complaints and answers; takes judicial notice of 12PR143; Stmt by Atty Powers re petition; does not know heirs; does not know if assets in estate; CT: questions conflict of interest under Supreme Court rules; cannot grant petition as filed; concern notice not given to decedent's parents; court prints obituary for counsel; CT: cannot grant petition appointing Atty Powers as Spec Adm; Petition denied; Atty Powers asks if allowed to amend petition to appoint another atty; CT: suggest atty research issues;		James G. Poulos Katherine M. Lopez
05-20-2014	Case disposed		James G. Poulos
05-29-2014	Order Denying Petition		James G. Poulos



STATE OF WISCONSIN }
COUNTY OF WASHINGTON } SS

I certify that this is a true and correct copy of a document in the possession of the Register in Probate for Washington County.
THIS CERTIFICATE IS NOT VALID UNLESS IT INCLUDES THE COURT SEAL.

06-11-2015 Denise M. Kist
Date Register in Probate

EXHIBIT 2